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9
 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN FRANCISCO DIVISION**

13
 14 VISUAL SUPPLY COMPANY, a
 15 Delaware corporation,

16 Plaintiff,

17 v.

18 ADAM KHIMJI, an individual, and DOES
 19 1-20, inclusive,

20 Defendants.

21 Case No. 3:24-cv-09361-WHO-SK

22 **PLAINTIFF VISUAL SUPPLY COMPANY'S**
 23 **OPPOSITION TO DEFENDANT ADAM**
 24 **KHIMJI'S MOTION FOR SANCTIONS**

25 Date: June 18, 2025

26 Time: 2:00 p.m.

27 Place: Courtroom C, 15th Floor

28 Judge: Hon. Sallie Kim

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1 **I. INTRODUCTION**

2 Defendant Adam Khimji's Motion for Sanctions (Dkt. 20) (the "Motion" or "Mot.") is
 3 appalling and sanctionable itself. Without any legal basis or precedent, Mr. Khimji seeks a
 4 panoply of draconian sanctions against Plaintiff Visual Supply Company ("VSCO"), including
 5 dismissal of this litigation, quashing old subpoenas in a separate terminated matter, attorneys'
 6 fees, costs, and a monetary fine. What is worse, Mr. Khimji is represented by counsel, who should
 7 know better than to abuse the "extraordinary remedy" of sanctions, which must be "exercised with
 8 extreme caution." *Operating Eng'r's Pension Tr. v. A-C Co.*, 859 F.2d 1336, 1345 (9th Cir. 1988).

9 Instead, Mr. Khimji and his counsel threatened this Motion hoping that baseless threats
 10 could get Mr. Khimji out of this case. That is an improper purpose that is sanctionable. In
 11 threatening and then filing this Motion two months later, Mr. Khimji and his counsel have far
 12 exceeded the bounds of permissible advocacy—the motion is at best a cynical attempt to
 13 weaponize the judicial process and an affront to the integrity of these proceedings. As one Court
 14 remarked in denying an even less-egregious attempted sanctions motion: "Threatening sanctions
 15 casually or as a matter of course has no place among officers of the court—again, except in the
 16 most egregious cases and, then, only as a last resort. The type of conduct on display here threatens
 17 the civility and professionalism on which the Rules and the Court rely to resolve disputes. And it
 18 will not be tolerated." *Harrison Prosthetic Cradle Inc. v. Roe Dental Laboratory, Inc.*, 608 F.
 19 Supp. 3d 541, 551 (N.D. Ohio 2022). So it should be here.

20 The events and conduct that led to the filing of the Complaint here—which Mr. Khimji
 21 claims warrant sanctions—are exactly how the legal process is supposed to proceed. At every turn,
 22 VSCO took the cautious, well-grounded, and ethical approach to enforce its rights. That VSCO
 23 made the strategic decision to move forward with its complaint on trademark, unfair competition,
 24 trespass, and contract claims, while waiting to get further discovery regarding its DMCA and
 25 copyright claims, is fully within VSCO's discretion and at most shows proper restraint and
 26 judgment. This is even more true where, as here, time is of the essence as the safety, privacy, and
 27 dignity of users on the VSCO platform are all being threatened by Mr. Khimji and his co-
 28 conspirators.

1 In short, there can be no good faith complaint with anything that VSCO did here. Instead
 2 Mr. Khimji's real complaint is that the legal process worked and he was caught as the ring-leader
 3 of an illegal, infringing, and depraved scheme targeting VSCO, its platform, and its users. Using
 4 the Rule 11 sanctions mechanism in a blatant attempt to cover up illegal conduct is one of the
 5 most egregious possible uses of the sanctions process, and should not be tolerated. Accordingly,
 6 the Court should deny the motion as to VSCO and should instead impose sanctions on Mr. Khimji
 7 and his counsel.

8 **II. FACTS**

9 **A. VSCO, Its Services, And Its Intellectual Property**

10 VSCO is a San Francisco Bay Area-based photo technology company and creator
 11 platform. Declaration of Akaash Gupta ("Gupta Decl.")¹ ¶ 4. Since 2011, VSCO has cultivated an
 12 enormous and vibrant community of creators, to whom it provides innovative tools and resources
 13 to elevate their photography, video, and design craft. *Id.* ¶ 4. Currently, VSCO has over 300
 14 million registered users worldwide. *Id.* ¶ 3.

15 As a trusted staple in the creative community for over a decade, VSCO rigorously protects
 16 the intellectual property rights of itself and its users. Specifically, VSCO owns and maintains a
 17 global trademark portfolio, including, among many other properties, four incontestable U.S.
 18 registrations for the word mark VSCO and three for its circular logo. U.S. Trademark Reg. Nos.
 19 4,273,434; 4,672,062; 4,262,139; 4,716,756; 5,142,430; 5,271,667; and 5,125,103.

20 In addition, VSCO protects itself and its users through account registration and a
 21 comprehensive Terms of Use ("TOU"). Gupta Decl. ¶ 5. Pursuant to the TOU, VSCO's users
 22 represent and warrant that they have all necessary rights and permissions in the content they post
 23 on VSCO's platform, including the copyrights in the images and other creative works that they
 24 post, but the TOU authorizes VSCO to enforce those copyrights on its users' behalf. Gupta Decl. ¶

25
 26 ¹ These citations refer to the Declaration of Akaash Gupta In Support Of Plaintiff Visual Supply
 27 Company's Opposition to Defendant Adam Khimji's Motion To Dismiss And/Or Stay filed in this
 28 action on April 14, 2025 (Dkt. 16-1), a copy of which is attached as Exhibit ("Ex.") A to the
 Declaration of Andrew M. Levad In Support Of Plaintiff Visual Supply Company's Opposition To
 Defendant Adam Khimji's Motion For Sanctions ("Levad Decl.") filed concurrently herewith.

1 5; Dkt. 15-2,² p. 182. The TOU further prohibits copying, scraping, or distribution of VSCO users'
 2 content. Gupta Decl. ¶ 5; Dkt. 15-2, p. 178-80, 182.

3 Finally, VSCO also employs technological access controls, such as disabling the ability to
 4 right click and save images and requiring login credentials for certain activities, and data security
 5 tools to prevent third parties from downloading VSCO users' content, sharing or distributing that
 6 content, or accessing those users' deleted content or the metadata (such as geolocation data) in the
 7 content. Gupta Decl. ¶ 5; Dkt. 15-2, p. 178-80, 182.

8 **B. VSCO Discovers Defendants' Infringing Websites And Online Communities**

9 In May 2023, VSCO discovered the first of a series of websites (the "Infringing Website")
 10 and Reddit communities (the "Infringing Reddit Communities"), created and operated by the
 11 Defendants in this action, that targeted VSCO to take advantage of its female user base. Levad
 12 Decl. ¶ 3. The Infringing Websites and Infringing Reddit Communities contained thousands of
 13 copyright-protected images of VSCO users, particularly women, that had been scraped from those
 14 users' VSCO accounts, as well as those users' VSCO account names and, in many instances, the
 15 geolocation data associated with those users' photos. *Id.* ¶ 4. The domain names for the Infringing
 16 Websites often incorporated the VSCO trademark (e.g., <vsco.club>, <vsco.page>, <vsco.top>,
 17 <backupvs.co>, <downloadvsco.co>, <vscolookup.com>, <novsco.co>, <glizzy.cafe>, and
 18 <downloader.se>, and <socialgirls.live>, among others); and the subreddit names for the
 19 Infringing Reddit Communities often incorporated the VSCO trademark with a derogatory slur for
 20 the users (e.g., r/VSCOsluts, r/VSCOsluts0, r/VSCOslutss, r/VSCOslutsz2, r/VSCOsloots, and
 21 r/VSCO_Nudes, among others). *Id.* ¶ 5.

22 The Infringing Websites and Infringing Reddit Communities are interactive and allow
 23 Defendants and other internet users to traffic these VSCO users' copyright-protected images
 24 among one another, advertise and sell access to Defendants' personal repositories of scraped
 25 images, and, in many instances, see exactly where these users' photos were taken using an
 26

27 ² VSCO does not dispute that Exhibit G to the Declaration of Simon Lin In Support Of Defendant
 28 Adam Khimji's Motion To Dismiss And/Or Stay (Dkt. 15-2, pp. 176-203) is a true and accurate
 printout of VSCO's current TOU.

1 interactive “Map” feature applying the stolen images’ geolocation data. Levad Decl. ¶ 6. The
 2 Infringing Websites and Infringing Reddit Communities all contained substantial unauthorized use
 3 of VSCO’s trademarks. *Id.*

4 In addition to the Infringing Websites and Infringing Reddit Communities, VSCO
 5 discovered a Patreon account named “VSCOclub.” Levad Decl. ¶ 7. The “VSCOclub” Patreon
 6 was associated with the Infringing Websites <vscoclub> and <glizzy.cafe>, and allowed users to
 7 buy subscriptions to repositories of these VSCO users’ images, including their deleted content,
 8 and advertised that the Patreon account owner had “10+ million [VSCO users’] accounts saved.”

9 *Id.*

10 The creators and operators of the Infringing Websites, Infringing Reddit Communities, and
 11 “VSCOclub” Patreon took extreme measures to obfuscate their true identities. *Id.* ¶ 8. They
 12 operated only under aliases and anonymous email addresses and used proxy services to register the
 13 Infringing Websites, which shielded their identities from WHOIS and other lookup tools. *Id.* ¶ 8.
 14 The <vscoclub> and <glizzy.cafe> websites contained the anonymous contact email address
 15 “vscoclub@protonmail.com.” *Id.* ¶ 9.

16 **C. VSCO Begins Copyright And Trademark Enforcement Against Defendants’
 17 Websites, But Is Unable To Ascertain Defendants’ True Identities**

18 VSCO began copyright and trademark enforcement efforts against the Infringing Websites
 19 and Infringing Reddit Communities promptly after it discovered them. *Id.* ¶ 10. VSCO, through
 20 counsel, submitted trademark and copyright infringement reports to the domain registrars and web
 21 hosts for the Infringing Websites in May 2023, July 2023, July 2023, December 2023, January
 22 2024, March 2024, April 2024, May 2024, July 2024, September 2024, October 2024, and
 23 November 2024, requesting that they take down or disable access to the Infringing Websites. *Id.* ¶
 24 11. VSCO, through counsel, also submitted trademark and copyright infringement reports to
 25 Reddit in December 2023, January 2024, February 2024, July 2024, August 2024, September
 26 2024, and October 2024, requesting that Reddit take down or disable access to the Infringing
 27 Reddit Communities. *Id.*

28 On August 28, 2023, VSCO filed a complaint pursuant to the Uniform Domain Name

1 Dispute Resolution Policy (“UDRP”) in the World Intellectual Property Organization Arbitration
 2 and Mediation Center (“WIPO”), seeking the transfer of the <vsco.page>, <vsco.club>, and
 3 <glizzy.cafe> domains. Levad Decl. ¶ 12. In this proceeding, on September 1, 2023, WIPO
 4 identified the registrant behind <vsco.club> and <glizzy.cafe> with the alias, “Aidan Salamon”,
 5 with a fictitious address in Toronto, Canada, and the email address “vscoclub@protonmail.com.”
 6 *Id.* And on August 28, 2023, WIPO determined that the <vsco.page>, <vsco.club>, and
 7 <glizzy.cafe> domains had been registered in violation of the UDRP, and ordered that they all be
 8 transferred to VSCO. *Id.*

9 On February 9, 2024, VSCO filed another UDRP complaint in WIPO, seeking transfer of
 10 the <vsco.top> domain. *Id.* ¶ 13. In this proceeding, on February 14, 2024, WIPO identified the
 11 registrant behind <vsco.top> with the proxy service “Nice IT Services Group Inc.”, with a
 12 fictitious address in Loubiere, Dominica, and an anonymized email address
 13 “domains+vsco.top@dendrite.network.” *Id.* And on April 3, 2024, WIPO determined that the
 14 <vsco.top> domain had been registered in violation of the UDRP, and ordered that it be
 15 transferred to VSCO. *Id.*

16 **D. VSCO Requests Issuance Of DMCA Subpoenas To Identify The Creators Of
 17 Defendants’ Infringing Websites, Which This Court Reviews And Approves**

18 After months of escalating copyright and trademark enforcement actions against the
 19 Infringing Websites and Infringing Reddit Communities, on June 28, 2024, having only uncovered
 20 fake name aliases, fake locations, and anonymized email addresses, VSCO initiated *In re DMCA*
 21 *Subpoenas to Cloudflare, Inc., et al.*, No. 24-mc-80159-SK (N.D. Cal.) pursuant to 17 U.S.C. §
 22 512(h) of the Digital Millennium Copyright Act (“DMCA”), seeking the issuance of subpoenas
 23 (the “DMCA Subpoenas”) to ascertain the identities of the persons responsible for the
 24 infringement of its users’ copyrights, which the TOU authorizes VSCO to do on its users’ behalf.
 25 Gupta Decl. ¶ 5; Dkt. 15-2, p. 182; Levad Decl. ¶ 14.

26 Specifically, VSCO sought issuance of DMCA Subpoenas to three internet service
 27 providers involved in the creation or operation of the Infringing Websites: (1) Cloudflare, Inc.
 28 (“Cloudflare”), the registrar and/or web host for <vsco.club>, <glizzy.cafe>, <vsco.page>,

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1 <vsco.top>, and <downloader.se>; (2) Patreon, Inc. (“Patreon”), the operator of the monetization
 2 platform for the “VSCOclub” Patreon; and (3) NameSilo, LLC (“NameSilo”), the registrar for
 3 <vsco.top>. Levad Decl. ¶ 14. In the DMCA Subpoenas, VSCO sought production of documents
 4 from these internet services providers sufficient to identify the persons who were copying and
 5 distributing VSCO’s users’ copyright-protected images on these Infringing Websites, as well as
 6 violating the DMCA’s anti-circumvention provisions by accessing, scraping, and copying these
 7 images. *Id.*

8 In its request for issuance of the DMCA Subpoenas, VSCO submitted records of its
 9 copyright and DMCA takedown notices issued to Cloudflare, Patreon, and NameSilo:

- 10 • As for Cloudflare, VSCO submitted a declaration that its counsel used Cloudflare’s
 11 established intellectual property abuse reporting procedures to submit copyright
 12 infringement and DMCA abuse reports regarding <vsco.club>, <glizzy.cafe>,
 13 <vsco.page>, <vsco.top>, and <downloader.se> on July 13, 2023; January 3 and 10,
 14 2024; March 15 and 22, 2024; and April 2 and 9, 2024. VSCO also submitted copies of
 15 Cloudflare’s confirmation of receipt of these copyright infringement and DMCA abuse
 16 reports, and a chart displaying 250 links of webpages that displayed copyright-
 17 protected content on the Infringing Websites and the corresponding VSCO webpages
 18 where that content had been unlawfully copied. Levad Decl. ¶ 14; Dkt. 20-2, pp. 45-46
 19 at ¶¶ 3-6.³
- 20 • As for Patreon, VSCO submitted a declaration that its counsel used Patreon’s
 21 established intellectual property abuse reporting procedures to submit a copyright and
 22 trademark takedown notice regarding the “VSCOclub” Patreon on July 25, 2023.
 23 VSCO also submitted a copy of Patreon’s confirmation of receipt of this takedown
 24 notice. Because the “VSCOclub” Patreon contained both copyright and trademark
 25 infringements, VSCO’s abuse report contains allegations of both copyright and

26
 27 ³ VSCO does not dispute that Exhibit D to the Declaration of Simon Lin In Support Of Motion For
 28 Sanctions (Dkt. 20-2, Ex. D, pp. 43-46) is a true and correct copy of the Declaration of Andrew M.
 Levad In Support Of VSCO’s Request To The Clerk For Issuance Of The DMCA Subpoenas.

1 trademark infringement. Levad Decl. ¶ 14; Dkt. 20-2, p. 46 at ¶ 7.

2

- 3 As for NameSilo, VSCO submitted a declaration that its counsel used NameSilo's
4 established intellectual property abuse reporting procedures to submit a copyright and
5 copyright infringement and DMCA abuse report regarding <vsco.top> on January 3,
6 2024. VSCO also submitted copies of NameSilo' confirmation of receipt of this abuse
7 report and a screen-capture showing VSCO's submission of the abuse report. Levad
Decl. ¶ 14, Dkt. 20-2, p. 46 at ¶ 8.

8 On June 28, 2024, this Court granted VSCO's request for issuance of the DMCA
9 Subpoenas. *In re DMCA Subpoenas to Cloudflare, Inc., et al.*, No. 24-mc-80159-SK (N.D. Cal.)
10 (Dkt. 4). VSCO then served the DMCA Subpoenas on Cloudflare, Patreon, and NameSilo on July
11 1 and 2, 2024. Levad Decl. ¶ 15. No party challenged the DMCA Subpoenas, and the
12 miscellaneous action opened to issue the DMCA Subpoenas was terminated. Levad Decl. ¶ 16.

13 **E. Cloudflare And Patreon Provide Documents Responsive To The DMCA
14 Subpoenas, And Both Identify Mr. Khimji**

15 Cloudflare and Patreon produced documents in response to the DMCA Subpoenas issued
16 to them. Levad Decl. ¶ 17. Specifically, Cloudflare produced account registration records for
17 <vsco.club> and <glizzy.cafe> (which is a domain redirect from <vsco.club>), and Patreon
18 produced account registration records for the "VSCOclub" Patreon. *Id.* These records display,
19 consistent with one another, Mr. Khimji's full name, his physical address, the email address
20 "vscoclub@protonmail.com," which ties to the same email identified in the WIPO proceedings,
21 and also, as to Cloudflare, Mr. Khimji's credit card information. *Id.*

22 To date, NameSilo has not produced records in response to the DMCA Subpoena issued to
23 it, indicating that discovery in this action is needed to secure the relevant documents and
24 information regarding the Infringing Domains in NameSilo's possession. *Id.* ¶ 18.

25 **F. VSCO Sends A Copyright And Trademark Enforcement Letter To Mr.
26 Khimji, But He Refuses To Comply**

27 On October 4, 2024, VSCO sent Mr. Khimji an enforcement letter using the contact
28

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1 information it learned through the DMCA Subpoenas. Levad Decl. ¶ 19; Dkt. 20-1, pp. 4-18.⁴ In
 2 this letter, VSCO demanded that Mr. Khimji cease and desist his conduct that violated the
 3 Copyright Act, the DMCA, the Lanham Act, state unfair competition statutes, and the common
 4 law, and further demanded that he cooperate in VSCO’s investigation into the other Infringing
 5 Websites and Infringing Reddit Communities. Levad Decl. ¶ 19; Dkt. 20-1, pp. 4-9. VSCO
 6 specifically sought information on the specific means by which Mr. Khimji and the Doe
 7 Defendants circumvented VSCO’s security measures in violation of the DMCA to scrape and
 8 download its users’ copyright-protected images and related data. Levad Decl. ¶ 19; Dkt. 20-1, pp.
 9 7-8.

10 Mr. Khimji retained counsel to respond and negotiate, and VSCO provided this counsel the
 11 documentation showing Mr. Khimji’s involvement in the Infringing Websites produced pursuant
 12 to the DMCA Subpoenas. Levad Decl. ¶ 20. However, after months of attempting to negotiate a
 13 resolution of the dispute in good faith with Mr. Khimji’s counsel, Mr. Khimji ultimately refused to
 14 comply with this enforcement letter or provide any information. *Id.* Mr. Khimji then terminated
 15 that counsel’s representation. *Id.*

16 **G. After Careful Consideration, VSCO Initiates The Instant Litigation**

17 Upon Mr. Khimji’s refusal to cooperate or provide any information to assist VSCO’s
 18 investigation into the violations of VSCO and its users’ rights, VSCO carefully and strategically
 19 evaluated all known facts and applicable laws. *Id.* ¶ 21. On December 23, 2024, it ultimately made
 20 the strategic decision to bring this action against Mr. Khimji and the Doe Defendants under the
 21 Lanham Act, California’s Unfair Competition Law, and California common law. *Id.* Proceeding
 22 swiftly with trademark, unfair competition, trespass to chattels, and breach of contract claims
 23 allowed VSCO to enforce its rights and protect its users without delay. *Id.* While VSCO also has
 24 viable claims against the Defendants under the Copyright Act and/or DMCA here, those claims
 25 would be aided by additional discovery from Defendants and non-parties involved in the operation
 26

27 ⁴ VSCO does not dispute that Exhibit A to the Declaration of Adam Khimji In Support Of Motion
 28 For Sanctions (Dkt. 20-1, Ex. A, pp. 4-18) is a true and correct copy of the October 4, 2024,
 enforcement letter and exhibits thereto that VSCO sent Mr. Khimji.

1 of the Infringing Websites and Infringing Reddit Communities to fully assess and substantiate
 2 those claims before asserting them in infringement litigation. Levad Decl. ¶ 21. And VSCO
 3 reserves its right to amend the Complaint to assert those claims (and any other additional claims)
 4 at the appropriate time and with a more complete factual record. *Id.*

5 **H. Mr. Khimji Serves The Motion for Sanctions And A Motion To Quash, Then
 6 Files A Scattershot Motion To Dismiss**

7 On December 30, 2024, VSCO served the Complaint on Mr. Khimji. Levad Decl. ¶ 22.

8 On January 8, 2025, Mr. Khimji executed a waiver of service of the summons in this
 9 action, setting his deadline to respond to the Complaint on March 31, 2025. Dkt. 9.

10 On March 12, 2025, Mr. Khimji's new counsel, Simon Lin, informed VSCO that he had
 11 been retained to represent Mr. Khimji in this action. Levad Decl. ¶ 23.

12 On March 21, 2025, only *nine days* after Mr. Khimji retained this new counsel, Mr. Lin
 13 served the instant Motion for Sanctions on VSCO. *Id.* ¶ 24. The same day, Mr. Lin served a
 14 Motion to Quash the DMCA Subpoenas. *Id.* VSCO informed Mr. Khimji's counsel that the
 15 Motion for Sanctions is meritless and wasteful of the Court's resources and that not only would it
 16 fail but also backfire and subject both Mr. Khimji and Mr. Lin to their own sanctions, and urged
 17 Mr. Khimji not to file it. *Id.* ¶ 25.

18 On March 31, 2025, Mr. Khimji filed a Motion to Dismiss, seeking dismissal of the
 19 Complaint for lack of personal jurisdiction, lack of subject matter jurisdiction, arbitration (despite
 20 no arbitration proceeding being initiated), forum non conveniens, and failure to state a claim. Dkt.
 21 15. This motion is fully briefed and remains pending. Dkts. 16, 17.

22 And on May 12, 2025, over seven weeks after serving it, Mr. Khimji filed the instant,
 23 baseless Motion for Sanctions, also seeking dismissal of the Complaint, as well as quashing of the
 24 DMCA Subpoenas, attorneys' fees, and a monetary penalty against VSCO. Dkt. 20.

25 **III. LEGAL STANDARD**

26 Federal Rule of Civil Procedure 11 provides for the imposition of sanctions when a filing
 27 is "frivolous, legally unreasonable, or without factual foundation, or is brought for an improper
 28 purpose." *Aldini AG v. Silvaco, Inc.*, No. 21-CV-06423-JST, 2023 WL 7308079, at *2 (N.D. Cal.

1 Nov. 6, 2023) (quoting *Estate of Blue v. Cnty. of Los Angeles*, 120 F.3d 982, 985 (9th Cir. 1997)).
 2 It is “an extraordinary remedy” that is to be exercised “with extreme caution.” *Aldini*, 2023 WL
 3 7308079, at *2 (quoting *Operating Eng’rs Pension Trust v. A-C Co.*, 859 F.2d 1336, 1345 (9th
 4 Cir. 1988)). The party seeking sanctions bears the burden of demonstrating by “clear and
 5 convincing evidence” that sanctions are justified. *Facebook, Inc. v. Gajjar*, No. 4:20-CV-02429-
 6 KAW, 2022 WL 18539351, at *2 (N.D. Cal. Aug. 23, 2022) (citing *In re Zilog, Inc.*, 450 F.3d
 7 996, 1007 (9th Cir. 2006)).

8 The Ninth Circuit has identified two circumstances in which sanctions are appropriate: (1)
 9 where a litigant makes a “frivolous filing,” *i.e.*, where he files a pleading or other paper which no
 10 competent attorney could believe was well grounded in fact and warranted by law; and (2) where a
 11 litigant files a pleading or other paper for an “improper purpose,” such as personal or economic
 12 harassment. *Greenberg v. Sala*, 822 F.2d 882, 885 (9th Cir. 1987). However, the Ninth Circuit
 13 also recognizes that Rule 11 “is not intended to chill an attorney’s enthusiasm or creativity in
 14 pursuing factual or legal theories.” *Id.* (quoting Fed. R. Civ. P. 11 Advisory Committee’s Note).
 15 Indeed, the Ninth Circuit warns that sanctions sought under Rule 11 or the Court’s inherent
 16 authority are reserved only for “the rare and exceptional case where the action is clearly frivolous”
 17 because the sanctions power “must be exercised with restraint and discretion.” *Facebook*, 2022
 18 WL 18539351, at *2-*3 (quoting *Operating Eng’rs*, 859 F.2d at 1345; *Chambers v. NASCO, Inc.*,
 19 501 U.S. 32, 44 (1991)).

20 In sum, “filing a motion for sanctions is not a valid litigation strategy, and they are
 21 generally not appropriate.” *Facebook*, 2022 WL 18539351, at *3. If a motion for sanctions is
 22 denied, the Court may sanction the moving party for bringing the motion in the first place, award
 23 the nonmoving party the reasonable expenses and attorneys’ fees incurred opposing the motion, or
 24 order the moving party to show cause why sanctions should not issue against it. *Id.*; Fed. R. Civ.
 25 Proc. 11(c)(2).

26
 27
 28

1 **IV. ARGUMENT**

2 As the facts above establish, VSCO acted with all due care, restraint, and judgment in
 3 enforcing its rights and eventually filing this action against Mr. Khimji. This is precisely how
 4 litigation is supposed to work.

5 Mr. Khimji seeks drastic sanctions because he was caught and is desperate. That is an
 6 improper purpose. While he has constructed a bizarre narrative to support his claim, it is entirely
 7 fictional. He argues that VSCO somehow acted improperly because its prelitigation efforts against
 8 Mr. Khimji and the Doe Defendants included both trademark and copyright enforcement, but
 9 VSCO's DMCA Subpoenas did not ultimately mature into copyright infringement claims in its
 10 initial Complaint here. But VSCO did not misuse the DMCA to uncover Mr. Khimji's identity;
 11 rather, the DMCA Subpoenas revealed Mr. Khimji as an infringer of both trademarks *and*
 12 copyrights, among many other legal transgressions.

13 Despite Mr. Khimji's muddled urging, there simply is no rule that DMCA subpoenas must
 14 culminate in copyright infringement claims to the exclusion of all others. The mere existence of
 15 potential additional claims does not render VSCO's chosen causes of action in the Complaint
 16 improper—let alone sanctionable. Parties routinely exercise discretion in selecting which claims to
 17 assert based on strategic, evidentiary, and jurisdictional considerations. It is outrageous to suggest
 18 that VSCO's decision to proceed on trademark infringement and other claims, while reserving
 19 rights as to copyright infringement and the DMCA, somehow constitutes litigation misconduct.
 20 That Mr. Khimji views himself as liable for *more* intellectual property violations, not fewer, is
 21 hardly a basis for punishing VSCO with unjustifiably harsh terminating and monetary sanctions.
 22 Mr. Khimji identifies zero precedent to support his tortured reading of the DMCA and Rule 11.
 23 There is none. For these reasons, the Motion is baseless and should be denied.

24 **A. There Is No Rule That Parties Must Use Information Learned From DMCA**

25 **Subpoenas Only In Later Copyright Infringement Litigation**

26 Mr. Khimji's Motion hinges on an incorrect and unsupportable reading of the DMCA. The
 27 DMCA allows persons authorized to act on copyright owners' behalf to request issuance of
 28 subpoenas to internet service providers for identification of infringers of those copyrights. 17

1 U.S.C. § 512(h)(1). And it requires such requests to contain a declaration that the purpose of the
 2 subpoena is “to obtain the identity of an alleged [copyright] infringer” and “that such information
 3 will only be used for the purpose of protecting rights under [the Copyright Act].” 17 U.S.C. §
 4 512(h)(2). Mr. Khimji would have this Court interpret this language to mean that persons
 5 authorized to act on copyright owners’ behalf may use DMCA subpoenas to learn the identities of
 6 copyright infringers—but that they may only thereafter pursue copyright infringement claims
 7 alone and otherwise must forget the identifying information when those copyright infringers have
 8 also committed other legal transgressions. Under Mr. Khimji’s interpretation of the DMCA,
 9 anyone who requests a DMCA subpoena must immediately sue the identified person only for
 10 copyright infringement, to the exclusion of any other cause of action under which the infringer
 11 may be liable, regardless of any strategic or jurisdictional concerns. But there is no precedent in
 12 this District, Circuit, or anywhere else with such an outrageous and bad faith interpretation of the
 13 DMCA subpoena statute.

14 The only case Mr. Khimji cites in support of his flawed position is *In re DMCA Subpoena*
 15 *to Reddit, Inc.*, 441 F. Supp. 3d 875, 883 (N.D. Cal. 2020). He goes so far as to assert that in this
 16 case “this Court stated that a DMCA subpoena may only be used to pursue copyright claims” and
 17 “the Court confirmed that the DMCA subpoena may only be used to protect copyrights, and not
 18 other IP rights.” Mot. at 7, 10⁵ (emphasis in original). These contentions are absolutely false. *In re*
 19 *DMCA Subpoena to Reddit* does not discuss, at all, the application of the DMCA subpoena to any
 20 other causes of action. Nor did it discuss, at all, whether sanctions are warranted for bringing non-
 21 copyright causes of action against persons whose identities as infringers of multiple forms of
 22 intellectual property were learned through the DMCA subpoena process.

23 Instead, *In re DMCA Subpoena to Reddit* was about copyright fair use. 441 F. Supp. 3d at
 24 882-87. There, an anonymous social media user had posted a religious organization’s copyright-
 25 protected materials to Reddit; the religious organization requested a DMCA subpoena to Reddit to
 26 identify the social media user; and the social media user moved to quash the DMCA subpoena

27
 28⁵ These page numbers reflect the document-level page numbers appearing on the PACER filing
 heading because the in-line page numbers set forth in the Motion are inconsistent and out of order.

1 before Reddit could comply with it. *Id.* at 882-83. In deciding whether to quash the DMCA
 2 subpoena, the Court’s analysis turned on whether the social media user’s use of the religious
 3 organization’s copyrighted material constituted fair use. *Id.* at 883-884. This analysis was
 4 pertinent because the Court noted that the DMCA only authorizes subpoenas to identify
 5 “infringers,” and “ fair use is not a mere defense to copyright infringement, but rather is a use that
 6 is not infringing at all.” *Id.* In other words, if the social media user’s use of the copyright-protected
 7 material constituted fair use, then he was not an “infringer” of any copyright, and, therefore, the
 8 copyright owner could not use the DMCA subpoena process to identify him. *Id.* at 883 (“If [the
 9 social media user] establishes that he made fair use of the copyrighted works, no claim of
 10 copyright infringement could plausibly be alleged against him, and the subpoena would not be
 11 authorized under the DMCA.”). The Court ultimately held that the alleged infringer did make fair
 12 use of the copyrighted material. *Id.* at 887. As such, he did not infringe any copyrights, and there
 13 was no basis in the DMCA to issue a subpoena to identify him. *Id.* at 887 (“The record establishes
 14 that [the social media user] made fair use of the [copyright-protected material]. Consequently, he
 15 did not infringe [the religious organization’s] copyrighted works, and there is no basis in the
 16 DMCA for a subpoena to compel disclosure of his identity.”). For this reason, the Court quashed
 17 the DMCA subpoena. *Id.*

18 Here, unlike *In re DMCA Subpoena to Reddit*, Mr. Khimji does not argue that his use of
 19 VSCO users’ copyright-protected materials constitutes fair use. He does not even argue that his
 20 distribution of VSCO users’ copyright-protected images did not amount to copyright infringement.
 21 Rather, his argument is that even if he did infringe VSCO users’ copyrights on <vscoclub>,
 22 <glizzy.cafe>, and the “VSCOclub” Patreon, that VSCO’s use of the DMCA Subpoenas to
 23 ascertain his identity was improper because VSCO secretly “was always pursuing trademark
 24 claims.” Mot. at 7. This is wild and false speculation about VSCO’s intentions and is devoid of
 25 any supporting legal precedent or factual support. While it isn’t true, this speculation could not
 26 possibly be a get-out-of-jail free card, as it requires Mr. Khimji to be not only liable for copyright
 27 infringement but also liable for trademark infringement. Adding additional infringements to Mr.
 28 Khimji’s ledger does not help him.

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1 At heart, VSCO's DMCA takedown notices, copies which were submitted to this Court
 2 with VSCO's request for issuance of the DMCA Subpoenas, all noted allegations of copyright
 3 infringement. Levad Decl. ¶ 14; Dkt. 20-2, pp. 45-46 at ¶¶ 3-8. And upon receiving Mr. Khimji's
 4 identity as a copyright infringer pursuant to the DMCA Subpoenas, VSCO enforced those
 5 copyrights by sending the cease and desist letter to Mr. Khimji demanding he stop infringing those
 6 copyrights, and the DMCA, and to inform VSCO of specific details of how he conducted his
 7 infringing activity. Levad Decl. ¶ 19; Dkt. 20-1, pp. 4-18. These actions are in perfect alignment
 8 with the DMCA and its purpose. *See In re DMCA Subpoena to Reddit*, 441 F. Supp. 3d at 884
 9 ("The only authorized purpose for the subpoena under the DMCA was to discover his identity as
 10 an alleged copyright infringer to protect [the copyright owner's] copyrights."). Indeed, it was Mr.
 11 Khimji who in pre-litigation discussions claimed he was not sophisticated enough to commit the
 12 DMCA violations at issue here. That VSCO made the strategic decision to initially file a lawsuit
 13 on the most cut-and-dried legal theories under the facts known at the time—leaving other claims
 14 for further factual development during discovery—does not violate the DMCA in any way. Far
 15 from sanctionable, VSCO's conduct is as cautious, well-grounded, and legally sound as possible.
 16 Nowhere in the DMCA, *In re DMCA Subpoena to Reddit*, or any other legal precedent does any
 17 contrary authority exist.

18 Not satisfied with making baseless claims about VSCO's intentions and misconstruing *In*
 19 *re DMCA Subpoena to Reddit*, Mr. Khimji next analogizes the DMCA subpoena process to the
 20 "fruit of the poisonous tree" from criminal law. Mot. at 12. He asserts VSCO's learning of Mr.
 21 Khimji's identity as a copyright infringer pursuant to the DMCA Subpoenas means, *ipso facto*,
 22 that VSCO may not use that knowledge in connection with any other cause of action beyond
 23 copyright infringement. *Id.* This is absurd, and, of course, also incorrect. There is no "fruit of the
 24 poisonous tree" rule in civil actions; that doctrine relates to Fourth Amendment improper search
 25 and seizure in criminal actions. *Cf. Gammage v. City of San Francisco*, No. 18-CV-05604-JCS,
 26 2020 WL 1904498, at *10 (N.D. Cal. Apr. 17, 2020) ("To start, the Fourth Amendment's
 27 exclusionary rule (and its fruit of the poisonous tree doctrine) does not apply in the context of civil
 28 suits under § 1983.") (citing *Lingo v. City of Salem*, 832 F.3d 953, 959–60 (9th Cir. 2016));

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1 *Manuel v. City of Menlo Park*, No. C 90-0911 BAC, 1993 WL 204259, at *1 (N.D. Cal. June 2,
 2 1993) (“The exclusionary rule argument advanced by plaintiff in his reply papers is denied
 3 because this is a civil action”). Mr. Khimji cites no precedent where information learned from a
 4 DMCA subpoena was considered “fruit of the poisonous tree” in a civil action brought under the
 5 Lanham Act or any other law, let alone where the filing of such an action was considered
 6 sanctionable conduct. His argument is as frivolous as they come.

7 In sum, Mr. Khimji is trying to conjure a rule about the DMCA subpoena process that
 8 simply does not exist. Nor should it exist. Mr. Khimji’s fake rule seeks to reward and immunize
 9 infringers who also committed additional legal violations. That is not only a frivolous argument,
 10 but also premising a Rule 11 motion on such a frivolous argument surely amounts to an improper
 11 purpose. VSCO properly used the DMCA Subpoenas to learn who was infringing its users’
 12 copyrights: Mr. Khimji. And it sent Mr. Khimji an enforcement letter explaining the copyright
 13 infringement and demanding Mr. Khimji cease and desist. There is no rule prohibiting VSCO
 14 from using its knowledge that Mr. Khimji orchestrated the infringing websites to later to sue Mr.
 15 Khimji under any and all legal theories. And Mr. Khimji failed to meet his burden to provide any
 16 evidence—let alone clear and convincing evidence—otherwise. Because the existence of this fake
 17 rule is the only basis of Mr. Khimji’s Motion, the Court should summarily deny the Motion.

18 **B. VSCO Filed The DMCA Subpoenas Properly And In Good Faith, And They
 19 Should Not Be Quashed**

20 Mr. Khimji next asserts that a sanction in the form of *post hoc* quashing of the DMCA
 21 Subpoenas is warranted because VSCO allegedly relied on a false statement to obtain the DMCA
 22 Subpoenas. Mot. at 12-13. Specifically, without any basis to make this speculation about VSCO’s
 23 intentions, he posits that VSCO requested the DMCA Subpoenas to identify the infringers of its
 24 users’ copyrights when secretly it “had always intended to pursue non-copyright claims.” *Id.* at 12
 25 (emphasis in original). As the above established facts make clear, this statement is knowingly
 26 false. VSCO not only intended to pursue copyright claims when it filed the request for issuance of
 27 the DMCA Subpoenas, but then it did pursue those copyright claims when it sent its C&D letter to
 28 Mr. Khimji. Further, VSCO may add copyright and DMCA claims to the current Complaint, but

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1 has chosen to pursue discovery to determine the proper scope of those claims. Although Mr.
 2 Khimji's ascertainment of VSCO's intentions would require testimony or psychic abilities (neither
 3 of which Mr. Khimji has), he nonetheless sets forth four reasons upon which to base his
 4 supposition. None has any merit.

5 **First**, Mr. Khimji notes that VSCO retained the same law firm to represent it in connection
 6 with both the DMCA Subpoenas and the instant litigation. Mot. at 13. He argues this somehow
 7 made VSCO's conduct improper. *Id.* But as set forth above, VSCO and its counsel acted above
 8 any reproach with regard to the DMCA subpoena and the later related litigation. *Cf. Gammage*,
 9 2020 WL 1904498 at *10. Nor is there any law to prevent the same firm from both serving a
 10 DMCA subpoena and later filing a lawsuit that is lawsuit. The mere fact that VSCO used the same
 11 law firm in connection with intellectual property enforcement support is a very normal thing. It is
 12 efficient, not a matter for a sanctions motion.

13 **Second**, Mr. Khimji points to VSCO's takedown notice to Patreon that VSCO submitted in
 14 support of its request for a DMCA Subpoena to Patreon. Mot. at 13. Specifically, he asserts that
 15 this takedown notice contains allegations of trademark infringement, which "reveals that VSCO
 16 was intending all along to pursue trademark claims." *Id.* (emphasis in original). But, as established
 17 above, this is demonstrably false, perhaps hallucinated by GenAI. VSCO pursued both trademark
 18 and copyright infringement enforcement hand-in-hand the entire time. VSCO never hid the fact
 19 that Mr. Khimji and his co-conspirators violated numerous federal and state laws, not just the
 20 Copyright Act here. To that end, as is evident on the face of this abuse report, this takedown notice
 21 contains allegations of both copyright and trademark infringement. Levad Decl. ¶ 14; Dkt. 20-2, p.
 22 46 at ¶ 7. As such, this takedown notice fully undermines Mr. Khimji's claim that VSCO lacked a
 23 basis to seek the DMCA Subpoena to identify the copyright infringer behind the "VSCOclub"
 24 Patreon, who also happened to be infringing VSCO's trademarks.

25 What Mr. Khimji also leaves out here is how absurd and completely implausible it is that
 26 Mr. Khimji claims to not have been involved, any yet somehow those who were involved set up a
 27 Patreon account to pay Mr. Khimji the ill-gotten gains from their infringing and illegal acts. The
 28 reality is that Mr. Khimji is a ring-leader of the illegal and depraved conduct here. This whole

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1 Motion does nothing but confirm his utter bad faith and complete lack of remorse for his
 2 despicable conduct.

3 **Third,** Mr. Khimji unsuccessfully tries to impugn the UDRP proceedings against
 4 <vsco.page>, <vsco.club>, <glizzy.cafe>, and <vsco.top> and argues that “[t]hese WIPO domain
 5 name dispute decisions clearly show that VSCO was relying on trademark claims, and not
 6 copyright claims.” Mot. at 14-15. This argument borders on satire. Obviously VSCO was relying
 7 on trademark claims in the context of the UDRP—“[t]he UDRP provides for an expedited
 8 arbitration process to resolve *domain name ownership disputes* involving *trademarks*.” *Shenzhen*
 9 *Big Mouth Techs. Co. v. Factory Direct Wholesale, LLC*, No. 21-CV-09545-RS, 2022 WL
 10 1016666, at *2 (N.D. Cal. Apr. 5, 2022) (emphasis added); *see also Rules For Uniform Domain*
 11 *Name Dispute Resolution Policy*, Internet Corporation for Assigned Names and Numbers,
 12 <https://www.icann.org/resources/pages/policy-2024-02-21-en>. The UDRP was one of many
 13 enforcement tools that VSCO employed to stop the Infringing Websites and Infringing Reddit
 14 Communities. But the Infringing Websites and Infringing Reddit Communities involved both
 15 trademark and copyright infringement, in both the domains for the websites and in their posted
 16 content. Levad Decl. ¶¶ 4-6, 11-14. VSCO’s proper use of the UDRP for enforcement against web
 17 domains that incorporated the VSCO trademarks shows VSCO used appropriate legal processes,
 18 not some bizarre hallucinated conspiracy as Mr. Khimji or his GenAI tool claims.

19 **Fourth,** Mr. Khimji argues that the enforcement letter VSCO sent to Mr. Khimji upon
 20 learning of his true identity somehow indicates that VSCO lacked a proper basis to seek the
 21 DMCA Subpoenas because the letter “focusses [sic] on trademark claims with copyright only
 22 mentioned in passing.” Mot. at 15. Not so. As discussed extensively herein and in the Complaint,
 23 Mr. Khimji committed numerous legal transgressions against VSCO and its users, including
 24 trademark and copyright violations, unfair competition, breach of contract, and trespasses upon
 25 VSCO’s protected computer systems. Levad Decl. ¶ 4-6, 11-14. As is evident on the face of the
 26 document, VSCO’s enforcement letter to Mr. Khimji discussed all of those unlawful acts,
 27 including copyright infringement and DMCA violations:

28

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1 Moreover, the Infringing Websites targeted VSCO users . . . and used illegal
 2 tactics to steal those VSCO users' copyright-protected images (the "Protected
 3 Images"). According to our investigation, you accessed VSCO's website
 4 (<https://www.vSCO.co/>) without authorization and using technological measures to
 5 circumvent certain access protections VSCO has put in place to protect its user's
 6 content and images. Your knowing and unlawful distribution and display of the
 7 Protected Images was unauthorized and constitutes copyright infringement.
 8 Moreover, the Infringing Websites permitted their users to download and save
 9 local copies of the Protected Images, thereby facilitating unauthorized access to
 10 downloadable digital copies of the Protected Images in violation of at least the
 11 anti-trafficking provisions of the Digital Millennium Copyright Act.

12 Levad Decl. ¶ 19; Dkt. 20-1, pp. 6-7. As such, VSCO's enforcement letter to Mr. Khimji further
 13 establishes that VSCO acted in the utmost good faith and in full compliance with the DMCA and
 14 all applicable laws. Consistent with Ninth Circuit law, VSCO used the DMCA Subpoenas to
 15 identify a copyright infringer, and then enforced against that infringer to stop his infringements of
 16 VSCO users' copyrights.

17 In sum, Mr. Khimji characterization of the DMCA subpoena process and VSCO's
 18 enforcement against the Infringing Websites and Infringing Reddit Communities show a bad faith,
 19 false characterization, or, at best, a willfully blind copy-and-paste of a bad GenAI result. The same
 20 individuals who were infringing VSCO users' copyrights on Infringing Websites and Infringing
 21 Reddit Communities were also infringing VSCO's trademarks, as well as committing other
 22 unlawful acts.

23 As such, VSCO has pursued multiple enforcement avenues to discover who these
 24 infringers are and to make them stop, including trademark and copyright abuse reports, cease and
 25 desist letters, UDRP actions, and the DMCA Subpoenas. That is absolutely appropriate and
 26 required here. The DMCA Subpoenas revealed Mr. Khimji as the creator of Infringing Websites
 27 that violated both copyright and trademark laws, among others. VSCO's strategic decision not to
 28 sue Mr. Khimji under the Copyright Act or DMCA at this time shows restraint and judgment to
 wait for discovery, and certainly does not warrant *post hoc* quashing of the DMCA Subpoenas.

29 *Kuang Xuan Liu v. Win Woo Trading, LLC*, No. 14-CV-02639-KAW, 2014 WL 7140514, at *4
 30 (N.D. Cal. Dec. 12, 2014) ("Moreover, Courts rarely award sanctions, and only do so when the
 31 conduct at issue is particularly egregious."). Mr. Khimji failed to meet his burden to demonstrate

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1 otherwise at all, let alone by clear and convincing evidence, nor did he identify any precedent in
 2 which his requested relief has ever been granted in similar circumstances. It has not. Thus, the
 3 Court should deny the Motion summarily.

4 **C. VSCO Filed The Complaint Properly And In Good Faith, And It Should Not
 5 Be Dismissed**

6 In addition, Mr. Khimji alleges that the very filing of VSCO's Complaint is sanctionable.
 7 Mot. at 7. This is merely the desperate plea of a defendant seeking to avoid actual consequences
 8 for his own despicable conduct. As established above, VSCO could not have acted in more good
 9 faith and in strict compliance with the applicable law here.

10 The applicable law makes this even more clear. When a complaint is the primary focus of a
 11 motion for sanctions, the court must conduct a two-prong inquiry to determine (1) "whether the
 12 complaint is legally or factually baseless from an objective perspective"; and (2) "if the attorney
 13 has conducted a reasonable and competent inquiry before signing and filing it." *Aldini*, 2023 WL
 14 7308079, at *2 (quoting *Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005)). Courts combine
 15 both prongs of this test using the word "frivolous" to denote a filing that is both baseless and made
 16 without a reasonable and competent inquiry. *Aldini*, 2023 WL 7308079, at *2. Even a "weak"
 17 basis to make the allegations in a complaint is sufficient to defeat a motion for sanctions. *In re
 18 California Bail Bond Antitrust Litig.*, 511 F. Supp. 3d 1031, 1053 (N.D. Cal. 2021) (citing and
 19 quoting *United Nat'l Ins. Co. v. R&D Latex Corp.*, 242 F.3d 1102, 1117 (9th Cir. 2001)). Here,
 20 neither prong could possibly support a sanctions finding, quite the opposite.

21 For example, in *Aldini*, 2023 WL 7308079, at *1, several French sovereign defendants
 22 filed a motion for sanctions against the plaintiff in a fraud case arising from French bankruptcy
 23 court proceedings. Specifically, the plaintiff had alleged that the defendants engaged in a
 24 fraudulent conspiracy to strip a bankrupt company of assets through manipulation of the
 25 bankruptcy court. *Id.* at *1-*2. The Court had dismissed the plaintiff's initial and amended
 26 complaints, holding that the French court's judgments should be recognized and granted
 27 preclusive effect, and thereafter, the defendants moved for sanctions against the plaintiff on
 28 grounds that the initial and amended complaints were legally baseless as barred by preclusion and

1 lack of jurisdiction. *Id.* But even under those circumstances, the Court rejected the defendants' 2 request for sanctions, noting that the plaintiff filed its complaints before the French court had 3 issued its judgments, so, at the time they were filed, they were not directly in conflict with any 4 prior judgment. *Id.* at *2. The Court similarly recognized that the plaintiff's allegations regarding 5 the conspiracy theory and jurisdiction did not expressly conflict with any binding case law, so, 6 even though they were made only on information and belief, they could not be considered "legally 7 baseless" to warrant sanctions. *Id.* (citing *In re Cal. Bail Bond*, 511 F. Supp. 3d at 1053 ("Where 8 there is *some* plausible basis, even quite a weak one, a claim is not baseless.") (emphasis in 9 original)). And finally, the Court found that the plaintiff had conducted an investigation prior to 10 filing suit, and that it based its complaints on the findings of that investigation. *Id.* at *3. For these 11 reasons, the court held the plaintiff's complaints were not frivolous and therefore not sanctionable, 12 without needing to examine whether they were filed for an improper purpose, and denied the 13 defendants' motion. *Id.* (citing Greenberg, 822 F.2d at 885 ("Where a *complaint* is in question, the 14 'improper purpose' analysis is not necessary because a non-frivolous complaint cannot be said to 15 be filed for an improper purpose.")) (emphasis in original).

16 Similarly, in *Facebook*, 2022 WL 18539351 at *1-*3, the plaintiff sued the defendant for 17 breach of contract, and the defendant moved to sanction the plaintiff on grounds that the claims in 18 the plaintiff's complaint were "not meritorious and that they misrepresented or fabricated 19 evidence." But the Court squarely rejected the defendant's motion for sanctions arising from the 20 complaint as "entirely frivolous." *Id.* at *3. To reach this holding, the Court noted that "*discovery*" 21 is meant to obtain evidence that either proves or disproves facts and claims alleged," and that the 22 defendant's gambit to resolve the case expeditiously through a motion for sanctions was 23 premature. *Id.* (emphasis added). The Court further chastised the defendant, advising him that 24 "filing a motion for sanctions is not a valid litigation strategy, and they are generally not 25 appropriate." *Id.* Furthermore, the only reason the court did not award the plaintiff its fees and 26 costs incurred in opposing the motion for sanctions was because the defendant was *pro se*. *Id.*

27 Finally, although *Harrison Prosthetic Cradle Inc. v. Roe Dental Lab'y, Inc.*, 608 F. Supp. 28 3d 541 (N.D. Ohio 2022), is not from this District, it is pertinent and instructive regarding the

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1 instant Motion, as well as Mr. Khimji and his counsel's egregious behavior in filing it. In
 2 *Harrison*, the plaintiff brought suit for patent infringement against a defendant who was not a
 3 resident of the forum. *Id.* at 545-46. In the complaint, the plaintiff had erroneously copied and
 4 pasted an allegation about the residence of this defendant from a prior action. *Id.* at 550-51. The
 5 defendant then moved to dismiss the complaint for improper venue, and further sought Rule 11
 6 sanctions against the plaintiff on grounds that its erroneous allegations regarding venue were
 7 factually and legally baseless. *Id.* at 551. The Court admonished the defendant appropriately:

8 Any request for sanctions should be the last resort for redressing the most
 9 egregious misconduct or abuse. Here, at what is effectively the outset of the case,
 10 even considering the prior action, Defendants rushed to raise the specter of
 11 sanctions. Indeed, counsel appreciated the error in the complaint (copying and
 12 pasting an allegation about the residence of [the defendant] from the earlier
 13 lawsuit). Instead of a reasoned and measured response, counsel immediately
 14 threatened sanctions. That threat had the characteristic response of making
 15 matters more difficult for the parties to address. They also resulted in the
 16 additional expenditure of judicial resources on matters not directed to the merits
 17 of the dispute.

18 At best, this conduct presents the sharpest of practice. Threatening sanctions
 19 casually or as a matter of course has no place among officers of the court—again,
 20 except in the most egregious cases and, then, only as a last resort. The type of
 21 conduct on display here threatens the civility and professionalism on which the
 22 Rules and the Court rely to resolve disputes. And it will not be tolerated.

23 *Harrison*, 608 F. Supp. 3d at 551. The Court of course denied the sanctions motion, and further
 24 ordered the defendants to show cause why they and their counsel should not be sanctioned for
 25 bringing the premature, frivolous sanctions motion. *Id.* So it should be here.

26 Here, like the plaintiff in *Aldini*, VSCO conducted a thorough investigation and
 27 enforcement campaign against the Infringing Websites and Infringing Reddit Communities for
 28 over a year before filing suit, and no prior court order or case law expressly forbids any cause of
 29 action against Mr. Khimji. 2023 WL 7308079, at *2-*3. As such, the Complaint is the opposite of
 30 frivolous. And as the Court in *Facebook* stated, to the extent there is any doubt as to the merits of
 31 VSCO's claims against Mr. Khimji, discovery is the cure, not dismissal or sanctions. 2022 WL
 32 18539351 at *3. Unlike the defendant in *Facebook*, though, Mr. Khimji is represented by counsel;
 33 as such, he cannot avail himself of the leniencies afforded to *pro se* litigants to evade the sanctions

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1 against himself and his counsel that should appropriately follow here. Like the defendants in
 2 *Harrison*, 608 F. Supp. 3d at 551, Mr. Khimji and his counsel “immediately” threatened sanctions
 3 rather than “engaging in a reasoned and measured response”—indeed, Mr. Khimji’s counsel
 4 served the instant Motion on VSCO only *nine days* after he was retained by Mr. Khimji, before
 5 even responding to the Complaint. Levad Decl. ¶ 24. As in *Harrison*, Mr. Khimji’s Motion has
 6 made matters more difficult for the parties and this Court to address, and has resulted in the
 7 expenditure of enormous party and judicial resources not directed to the merits of this dispute. 608
 8 F. Supp. 3d at 551. Like the *Harrison* Court held, Mr. Khimji and his counsel’s conduct has no
 9 place among officers of the court, threatens the civility and professionalism on which the Rules
 10 and the Court rely to resolve dispute, and should not be tolerated. *Id.* Thus, the Motion should be
 11 denied in its entirety, and this Court should issue sanctions against Mr. Khimji and his counsel.

12 **D. Mr. Khimji And His Counsel Should Be Sanctioned For Filing This Baseless,
 13 Wasteful Motion**

14 Filing frivolous sanctions motions is sanctionable, and the Ninth Circuit has affirmed the
 15 imposition of sanctions against parties and their attorneys who make frivolous filings or otherwise
 16 engage in bad faith conduct. *Toombs v. Leone*, 777 F.2d 465, 470 (9th Cir. 1985) (affirming
 17 imposition of monetary sanctions against a party and its counsel); *Gibson v. Credit Suisse Grp.*
 18 *Sec. (USA) LLC*, 733 F. App’x 342, 345 (9th Cir. 2018) (affirming sanctions award of attorneys’
 19 fees); *In re USA Com. Mortg. Co.*, 462 F. App’x 677, 680 (9th Cir. 2011) (affirming sanctions
 20 award under the Court’s inherent authority because “counsel’s conduct . . . constituted or was
 21 tantamount to bad faith”) (internal quotation and citation omitted); *see also Nationstar Mortg.*
 22 *LLC v. 312 Pocono Ranch Tr.*, No. 19-17504, 2021 WL 4938117, at *1 (9th Cir. Oct. 22, 2021)
 23 (sanctioning appellant and its counsel for filing a frivolous appeal). The Federal Rules also
 24 empower the Court to award VSCO its fees and costs associated with litigating this Motion. Fed.
 25 R. Civ. P. 11(c)(2) (“[T]he court may award to the prevailing party the reasonable expenses,
 26 including attorney’s fees, incurred for the motion”). This Court should therefore issue sanctions
 27 against Mr. Khimji and his counsel for filing this frivolous Motion, in the amount of VSCO’s
 28 reasonable attorney’s fees and costs, or, at the very least, order them to show cause why sanctions

1 against them should not issue. *Harrison*, 608 F. Supp. 3d at 551.

2 **V. CONCLUSION**

3 Mr. Khimji's Motion is deeply troubling. It is not merely misguided—it is egregious. Mr.
 4 Khimji provided no case law, zero, to support his flawed position that an exclusionary rule applies
 5 to information properly subpoenaed under the DMCA statute. And, rather than engage with the
 6 Complaint on its merits, Mr. Khimji and his counsel have manufactured a sideshow of baseless
 7 sanctions rhetoric. Motions like this threaten the civility and professionalism on which the Rules,
 8 the Court, and most counsel, rely to engage, manage, and resolve lawsuits. Such conduct from a
 9 party, particularly one represented by counsel, should not be tolerated. For the foregoing reasons,
 10 this Court should deny the Motion in its entirety, order Mr. Khimji to pay VSCO's reasonable fees
 11 and expenses incurred in opposing the Motion, and sanction Mr. Khimji and Mr. Lin for
 12 burdening the parties and this Court with this wholly meritless Motion. In the alternative, this
 13 Court should order Mr. Khimji and Mr. Lin to show cause why they should not be sanctioned.

14
 15 DATED: May 27, 2025

Respectfully submitted,

16
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 19 By:


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